

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark
Application Serial No. 78/229,875
Mark: MESSAGE IN A BOTTLE

GOLD SHELLS, INC.,
a California corporation,
Opposer,

v.

KEITH CANGIARELLA,
Applicant.

In the Matter of Trademark
Registration No. 2,243,269
Mark: MESSAGE IN A BOTTLE

KEITH CANGIARELLA,
Petitioner,

v.

ROGER ROJAS,
Respondent.

Opposition No. 91162780 and
Counterclaim for Cancellation



11-28-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #64

MOTION OF OPPOSER GOLD SHELLS, INC., TO COMPEL APPLICANT'S ANSWERS TO FIRST SET OF INTERROGATORIES

FACTUAL BACKGROUND

Opposer Gold Shells, Inc., (hereafter "Opposer"), hereby moves for an order requiring Applicant Keith Cangiarella (hereafter "Applicant") to answer Opposer's first set of interrogatories herein (hereafter "Opposer's interrogatories").

On June 29, 2005, Opposer's counsel served Opposer's interrogatories on Applicant regarding the present opposition proceeding. Attached hereto as Exhibit A

is a true copy of Opposer's interrogatories and the certificate of service thereof, demonstrating that Opposer's interrogatories were served on Applicant by first class mail on June 29, 2005. All interrogatories therein directed to Applicant were relevant to the issues in this opposition proceeding.

On August 12, 2005, Applicant's counsel served a response on Opposer's counsel, declining to answer any of the interrogatories. A copy thereof is attached hereto as Exhibit B.

On September 17, 2005, in an attempt to informally resolve this dispute prior to filing, Opposer's counsel sent a letter to Applicant's counsel asking him to "meet and confer" in regard to his failure to respond to the interrogatories. A copy of this letter is attached hereto as Exhibit C.

Applicant's counsel then sent a letter to Opposer's counsel dated September 29, 2005, a copy of which is attached hereto as Exhibit D. In this letter, Applicant's counsel set forth an elaborate argument for his position that Opposer's interrogatories exceeded the total number of written interrogatories allowed by 37 C.F.R. Section 2.120(d)(1), namely 75, counting subparts, and again declined to answer any of Opposer's interrogatories.

With the letter from Opposer's counsel dated September 17, 2005, (Exhibit C), Opposer's counsel included service of an additional copy of Opposer's interrogatories. However, Applicant's counsel in response thereto served the same

response as to the earlier service, namely a refusal to respond to any of the interrogatories.

As of this time, Opposer has still not received any response other than objections to Opposer's interrogatories.

APPLICABLE RULES

"The total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefore showing good cause, or upon stipulation of the parties. . . . If a party upon which interrogatories have been served believes that the number of interrogatories served exceeds the limitations specified in this paragraph, and is not willing to waive this basis for objection, the parties shall, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. If the inquiring party, in turn, files a motion to compel discovery, the motion must be accompanied by a copy of the set(s) of the interrogatories which together are said to exceed the limitation, and must otherwise comply with the requirements of paragraph (e) of this section." 37 C.F.R. Section 2.120(d)(1).

"If a party . . . fails to answer any questions propounded in . . . any

interrogatory, . . . , the party seeking discovery may file a motion before the Trademark Trial and Appeal Board for an order to compel . . . an answer, The motion must be filed prior to the commencement of the first testimony period as originally set or as reset. The motion shall include . . . a copy of the interrogatory with any answer or objection that was made; The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement. . . .” 37 C.F.R. Section 2.120(e)(1).

“When a party files a motion for an order to compel discovery, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion, and no party should file any paper which is not germane to the motion, except as otherwise specified in the Board’s suspension order. . . .” 37 C.F.R. Section 2.120(e)(2).

OPPOSER’S ARGUMENT

The undersigned is Opposer’s counsel. In preparing Opposer’s interrogatories, I started with my form interrogatories which are designed for use in a trademark or service mark case where likelihood of confusion is an issue, as it is in the present proceeding. I then taylor-made these form interrogatories into a set which was specially designed to be relevant to the facts of the current proceeding. In doing so,

I deleted a number of my usual interrogatories and subparts so as to make certain that the interrogatories would not be subject to opposing counsel's objection under 37 C.F.R. Section 2.120(d)(1) that there were more than 75, including subparts. In completing this process, I served counsel with 60 interrogatories. Three of those interrogatories have subparts: Number 11 has three, number 13 has six, and number 16 has two. Counting these subparts, the total number of interrogatories is 68, which is within the limit of 75 interrogatories (counting subparts) which is specified in the rule. It is clear from the response of Applicant's counsel, attached hereto as Exhibit D, that he would prefer to spend his time in this proceeding attempting to find novel and spurious ways in which to avoid answering interrogatories, rather than simply answering them.

Applicant's counsel has used the TTAB Manual, page 400-41, as an excuse for counting multiple interrogatories every time there is the word "and" or "or". This is a distortion of the manual's intent and makes no sense whatsoever in the context of Opposer's interrogatories, particularly with the background facts of the present proceeding.

In the present proceeding, the goods and services of both parties are integrally intertwined. Their businesses are both well represented by readily accessible Internet websites, Applicant's website at www.bottlemeamessage.com, and Opposer's website at www.messageinabottle.com. As can be readily be seen, each party receives

communications from others, records such communications in written or printed form, and transmits such communications to others, using communication devices consisting of text and graphic images printed on paper and enclosed in a glass container. This is what the opposition proceeding is all about. Thus, when Opposer asked Applicant to identify "each product and service" which was "produced or marketed" by Applicant, there was no undue burden requiring Applicant to go through two or three distinct issues, as claimed by Applicant, because Applicant's products and services are together easily identified as one thing (as noted above). Likewise, Opposer is not asking for two lists of things when Opposer asks Applicant for products and services "produced or marketed" by Applicant. Opposer is not asking for a list of items produced and another list of items marketed, but simply of one list of items which are either produced or marketed by Applicant.

Similarly, in Applicant's counsel's letter of September 29, 2005 (Exhibit D), page 3, Applicant's counsel illustrates how he breaks down Opposer's third interrogatory request into four separate requests based on two uses in the interrogatory of the word "or". It is respectfully submitted that this goes far beyond the requirements and examples of the TTAB manual with the sole purpose of attempting to justify a complete stonewalling of Opposer's interrogatories, which flies in the face of the broad and liberal scope and philosophy of the federal discovery rules.

The extent of the stonewalling by Applicant's counsel is illustrated by this statement in his objections (Exhibit B, paragraph 7, page 4):

"Beyond the information and documents provided herewith [which was nothing], Applicant will not produce any further information about its business, and will not produce any further confidential, proprietary and/or trade secret information and/or documents absent a showing of relevance, and need by Opposer and the entry of an appropriate protective order." (emphasis added)

I submit that this is an extraordinarily negative attitude to display toward modern discovery.

The readiness of Applicant's counsel to spend time on spurious discovery issues is also demonstrated by Applicant's motion to compel discovery responses herein from Opposer, served on October 18, 2005, five days after Opposer's counsel had served a full response to Applicant's interrogatories on October 13, 2005. (See Opposer's Response to Motion to Compel Discovery Responses and Stay the Proceedings, served on October 28, 2005, and filed with the TTAB.)

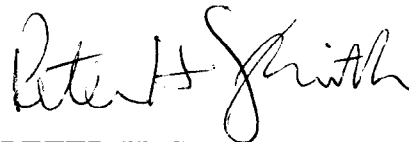
While the most flagrant disregard of Opposer's interrogatories was Applicant's refusal to answer any of them, Applicant's counsel also included boiler plate objections of every variety, a subject which was addressed in detail in my letter to counsel dated September 17, 2005 (Exhibit C).

I have made a good faith effort, by both telephone conference with Applicant's counsel and by correspondence with him, to resolve with him the issues presented in

this motion. However, I have been unable to reach any agreement with him.

Discovery ended in this proceeding on September 30, 2005. Opposer's testimony period is soon to begin. I need Applicant's answers to Opposer's interrogatories. I ask that the Board issue an order compelling a full response by Applicant to Opposer's interrogatories.

Respectfully submitted,



PETER H. SMITH

Attorney for Opposer Gold Shells, Inc.
1535 J Street, Suite A
Modesto, CA 95354
(209) 579-9524

Certificate of Service

I hereby certify that a copy of the foregoing MOTION OF OPPOSER GOLD SHELLS, INC., TO COMPEL APPLICANT'S ANSWERS TO FIRST SET OF INTERROGATORIES was mailed first-class mail, postage prepaid, to Stephen L. Anderson, Esq., Anderson & Associates, 32605 Highway 79 South, Suite 208, Temecula, California 92592, attorney for Applicant, on November 23, 2005.

Dated: November 23, 2005.


LUGENE M. BORBA

CERTIFICATE OF EXPRESS MAILING
UNDER 37 CFR §2.198

Mark: MESSAGE IN A BOTTLE

Serial No.: 78/229,875

Opposition No. 91162780

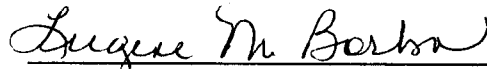
Name of party filing paper: Gold Shells, Inc.

Type of paper being filed: Motion of Opposer Gold Shells, Inc., to Compel
Applicant's Answers to First Set of Interrogatories

Express Mail Mailing Label Number: EQ 041849370 US

Date of Deposit: November 23, 2005

I hereby certify that the above-identified motion to compel answers to first set of interrogatories, which is attached, is being deposited on November 23, 2005, with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §2.198 in an envelope addressed to: U.S. Patent & Trademark Office, Trademark Trial & Appeal Board, P. O. Box 1451, Alexandria, VA 22313-1451.



Lugene M. Borba

Date: November 23, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

<p>In the Matter of Trademark Application Serial No. 78/229,875 Mark: MESSAGE IN A BOTTLE</p> <p>GOLD SHELLS, INC., a California corporation, Opposer,</p> <p>v. KEITH CANGIARELLA, Applicant.</p> <p>-----</p> <p>In the Matter of Trademark Registration No. 2,243,269 Mark: MESSAGE IN A BOTTLE</p> <p>KEITH CANGIARELLA, Petitioner,</p> <p>v. ROGER ROJAS, Respondent.</p>	<p>Opposition No. 91162780 and Counterclaim for Cancellation</p>
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**OPPOSER'S FIRST SET OF
INTERROGATORIES TO APPLICANT**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer Gold Shells, Inc., and Counterclaim Respondent Roger Rojas hereby propound and serve upon Applicant Keith Cangiarella the following written interrogatories to be fully and separately answered in writing, under oath, and within the time provided by law.

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I.
DEFINITIONS

A. Each interrogatory seeks information available to Applicant and his attorneys, agents, representatives, and all persons acting on his behalf. Accordingly, as used herein, "Applicant", "you" or "your" refer, without limitation, to Applicant Keith Cangiarella and any person or company affiliated with or related to Applicant, and all officers, directors, employees, agents, representatives, attorneys and all other persons acting or purporting to act on behalf of Applicant and/or his business, DreamWeaver Studios. Similarly, "Opposer" refers, without limitation, to Gold Shells, Inc., and any employees, attorneys, agents, representatives and all other persons acting on its behalf, including Roger Rojas, Counterclaim Respondent herein.

B. "Person" means any individual, partnership, firm, association, corporation, proprietorship or other business or government or other private or public legal entity.

C. "Correspondence" means, in addition to its ordinary meaning, any recording, memorandum or note (handwritten or otherwise) of conversations or telephone calls.

D. "Communication" means any contact among or between two or more persons and includes, without limitation, written and electronic contact by such means as letters, memoranda, telegrams, fax, telex, e-mail, or documents, and/or oral contact by such means as face-to-face meetings or telephone conversations.

E. "Document" is used herein in its broadest customary sense, and is defined to include every means of recording upon any tangible thing, and any form of communication

or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and whether by means of handwriting, typewriting, printing, photostating, photographing, sound or video recording, or other means, and includes originals, copies, reproductions, facsimiles, drafts, versions, revisions, and both sides thereof; and "document" shall include all the tangible things within the definition of "writings" or "recordings" set forth in Rule 1001 of the Federal Rules of Evidence.

The term "document" shall include all such materials, whether sent or received or not, and shall include but not be limited to writings, pages, books, pamphlets, letters, correspondence, reports, summaries, studies, evaluations, appraisals, forecasts, opinions, lists, notes, notations, memoranda, circulars, bulletins, diaries, calendars, calendar books, appointment books, telephone logs, notebooks, telegrams, cables, telex messages, e-mail messages, accounts, schedules, financial statements, ledgers, journals, indices, contracts, notices, minutes, applications, statements, invoices, bills, receipts, checks, vouchers, promissory notes, questionnaires, answers to questionnaires, statistical records, advertisements, brochures, court pleadings, computer printouts, Internet websites and materials, photographs, charts, drawings, models, recordings, microfilms, or other objects, regardless of their author or origin, and however denominated by the custodian or creator thereof.

F. "Identify" shall have the following meanings:

(i) When used in reference to a natural person, it means to state the person's

(a) full name, (b) present or last-known address and telephone number (business and residential), and (c) occupation, job title, business affiliation and/or nature of business.

(ii) When used in reference to a corporation, it means to state the corporation's (a) full name, (b) state of incorporation, and (c) address of its principal place of business, and if different, the address of the principal place of business at the time to which the discovery has reference.

(iii) When used in reference to a document, it means to state the type of document or other means of identifying it, its author or originator, its date or dates, all addresses and recipients, and its present location or custodian; and if any such document was but is no longer in Applicant's possession or subject to Applicant's control, state what disposition was made of it.

(iv) When used in reference to an oral communication, it means to state the speaker, each person spoken to or who otherwise heard the communication, the date and place of the communication, and the substance of the communication.

(v) When used with respect to an instance or occurrence, it means (a) to state the date and place thereof; (b) to identify all persons involved and the nature of their involvement; (c) to identify all agreements relating thereof; and (d) to state the result or disposition of such instance or occurrence.

G. "Relate" or "refer" means reflecting, containing, pertaining, referring, indicating, showing, describing, evidencing, discussing, mentioning, or concerning.

H. Whenever the singular is used, it shall also be taken to include the plural and vice versa.

I. "The Trademark" is defined as the mark MESSAGE IN A BOTTLE, regardless of (a) the style of lettering in which the mark appears, (b) the spacing or capitalization of the letters, and (c) whether or not the mark is used in connection with any design.

J. Whenever the conjunctive is used, it shall also be taken in the disjunctive and vice versa.

K. "Date" means the exact day, month and year, if ascertainable, or if not ascertainable, the best available approximation (including relationship to other events).

L. "Trademark" shall include "service mark".

II. INSTRUCTIONS

The following instructions apply to each of the interrogatories set forth herein:

1. Where an interrogatory can be answered in whole or in part by reference to a preceding or subsequent interrogatory, it is sufficient to indicate such by specifying the response to the preceding or subsequent interrogatory by number, and by specifying whether it is claimed that the response to the preceding or subsequent interrogatory is a full or partial response. If the latter, the response to the balance of the interrogatory shall be completed.

2. As to those interrogatories consisting of a number of separate divisions, or related parts or portions, a complete response is required to each such part or portion with

the same effect as if it were propounded as a separate interrogatory. Should an objection to an interrogatory be interposed, it should clearly indicate to which part or portion of the interrogatory it is directed.

3. These interrogatories shall be deemed continuing and Applicant shall provide, in the form of supplementary answers, any information requested herein which is available to Applicant at the time it submits its response hereto, but which becomes available to Applicant or to any of its attorneys, agents or representatives up to the time of trial.

4. If any document or identification of any document or oral communication is withheld under a claim of privilege, in order that the Board and the parties may determine the validity of the claim of privilege, provide sufficient information to determine the identity of the document or oral communication, and state the basis of any asserted claim of privilege.

5. If any of the following interrogatories cannot be answered in full after exercising due diligence to secure the information, please so state and answer to the extent possible, specifying your inability to answer the remainder and stating whatever information you have concerning the unanswered portions. If your answer is qualified in any particular, set forth the details of such qualification.

6. If, in answering any of these interrogatories, you claim any ambiguity in interpreting either the interrogatory or definition or instruction to the Applicant thereto, such claim shall not be utilized by you as a basis for refusing to respond, but there shall be set

forth as part of the response the language deemed to be ambiguous and the interpretation chosen for use in the interrogatory.

III. INTERROGATORIES

1. Identify each product and service produced or marketed by you to date under the Trademark.
2. Identify each product and service produced or marketed by you to date under trademarks other than the Trademark.
3. Identify any and all trademarks used to date, or intended to be used, by Applicant on any of its products or services.
4. Identify which trademark is used on each product and service produced or marketed by you to date.
5. Identify which trademark is intended to be used by you on each product and service intended to be produced or marketed by you in the future.
6. Identify each product and service produced or marketed by you to date for which you intend to change the trademark.
7. Identify what change is intended as to each product and service produced or marketed by you to date for which you intend to change the Trademark.
8. Identify all discontinued goods and services that Applicant previously identified with the Trademark.

9. As to all discontinued goods and services that Applicant previously identified with the Trademark, identify when the use began and ended for each such category of goods and services.

10. As to all discontinued goods and services that Applicant previously identified with the Trademark, state why the goods or services were discontinued.

11. With respect to each of the products and services identified in Applicant's response to interrogatory number 1, indicate Applicant's total sales of such products and services for each year from 1998 to the present date by giving for each:

- (a) the dollar value of such sales;
- (b) the unit volume of such sales; and
- (c) identify all documents related thereto.

12. If Applicant distributes goods and services identified with the Trademark through a third party or parties, including licensees and distributors, identify each third-party licensee or distributor and the geographical area in which such party or parties operate.

13. For each product and service which you have sold or intend to sell under the Trademark, identify:

- (a) the geographic area in which the products and services have been sold;
- (b) the channels of trade for the sale of the products and services;
- (c) each retail or other sales establishment;
- (d) the actual or intended class of consumers;

(e) the channels or media in which you have promoted or advertised the product or service or intend to promote or advertise the product or service; and

(f) all documents related thereto.

14. Identify, by mark and registration number or serial number, each trademark application filed by you in, or trademark registration issued to you by, the United States Patent and Trademark Office.

15. State whether you have ever received an opinion by correspondence or communication concerning possible trademark conflict arising out of the use or intended use of the Trademark by Opposer, and, if so, for each such correspondence or communication identify the date upon which each such correspondence or communication was transmitted, the person transmitting each such correspondence or communication, and the person receiving each such correspondence or communication.

16. Identify (a) any and all instances where you have received a telephone call, invoice, letter or other communication intended for Opposer, which referred or related to the products or services of Opposer, or which was an inquiry concerning a possible relationship or affiliation between you and Opposer, and (b) any documents related thereto.

17. Identify all documents in your possession, custody, or control that relate to or mention the Trademark as used by Opposer.

18. Identify when and the circumstances under which you first learned or became aware of Roger Rojas and his use of the Trademark.

19. Identify when and the circumstances under which you first learned or became aware of Gold Shells, Inc., and its use of the Trademark.

20. Identify each advertising agency or public relations firm which you have retained in connection with your sale or intended sale of products or services bearing the Trademark, starting with 1998 and continuing to the present time, and identify the date retained, the services provided by the firm, and the amounts you paid for such services.

21. List all media in which Applicant has promoted or advertised its goods or services associated with the Trademark from 1998 to the present.

22. State the dollar amount spent annually on advertising and promoting goods and services under the Trademark annually during each of the last five years, including the portion of the present year to date, for each category of goods and services sold by Applicant under the Trademark.

23. Identify all persons other than Opposer and Roger Rojas with whom you have or have had a dispute regarding use of the Trademark or a mark allegedly similar thereto.

24. Did you view the Internet website www.messageinabottle.com prior to March 25, 2003?

25. Did you apply for the Internet website address www.messageinabottle.com?

26. If your answer to interrogatory no. 25 is "yes", when did you apply?

27. If your answer to interrogatory no. 25 is "yes", what was the result of your application?

28. What is the basis for your denying that Opposer is the owner of service mark registration no. 2,243,269 for the mark MESSAGE IN A BOTTLE in Class 38 for receiving communications from others, recording such communications in written or printed form, and transmitting such communication to others?

29. What is the basis for your denying that registration no. 2,243,269 is valid and subsisting and is conclusive evidence of Opposer's exclusive rights to use the Trademark in commerce on the services specified in Opposer's registration?

30. What is the basis for your denying that the Trademark as used by Applicant so resembles the Trademark as registered by Opposer as to be likely to cause confusion, or to cause mistake, or to deceive?

31. What is the basis for your denying that since January 16, 1999, Opposer or its predecessor have been, and Opposer is now, actually using the Trademark in connection with the sale of services as described in Opposer's registration and as a trademark in connection with the sale of goods consisting of novelty, favor, and souvenir bottles containing messages and greetings, identical to some of the goods set forth in Applicant's application?

32. What is the basis for your denying that under Section 7(c) of the Lanham Act, Opposer has a priority right to the Trademark through constructive use based on the filing date of its predecessor's original intent-to-use service mark application?

33. What is the basis for your denying that use of the Trademark by Opposer and

its predecessor has been valid and continuous since the date of first use and has not been abandoned?

34. What is the basis for your denying that the services for which Opposer's mark was registered and the goods for which Applicant's application has been published for opposition are related?

35. What is the basis for your denying that you use the Trademark on services which are identical to those for which Opposer has registered the Trademark?

36. What is the basis for your denying that the nature of the goods and services of Applicant and Opposer are substantially similar?

37. What is the basis for your denying that the Trademark is symbolic of Opposer's extensive good will and customer recognition built up by Opposer and its predecessor through a substantial amount of time and effort in advertising and promotion?

38. What is the basis for your denying that the mark as used by Applicant so resembles the Trademark as used by Opposer as to be likely to cause confusion, or to cause mistake or to deceive?

39. What evidence do you have to support your affirmative defense that Opposer lacks any standing to bring this opposition?

40. What evidence do you have to support your affirmative defense that Opposer is barred by laches, acquiescence, and estoppel from bringing this opposition?

41. What evidence do you have to support your affirmative defense that Opposer's

claims are barred due to its own fraud and fraudulent conduct and that of its alleged predecessor?

42. What evidence do you have to support your affirmative defense that Opposer's claims are barred as unconscionable and due to the unclean hands of Opposer and its alleged predecessor, Roger Rojas?

43. What evidence do you have that Opposer and its alleged predecessor, Roger Rojas, have not used the Trademark on goods or services as an identification of origin of those goods or services identified in the Notice of Allowance for Opposer's registration no. 2,243,269?

44. What evidence do you have to support your affirmative defense that Opposer and its alleged predecessor have not used the Trademark on any services that may be properly characterized as within International Class 38?

45. What evidence do you have to support your affirmative defense that any use of the Trademark other than for the specific services identified in the Notice of Allowance for Opposer's registration no. 2,243,269 would not lead to a likelihood of confusion?

46. What evidence do you have to support your affirmative defense that Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition?

47. What evidence do you have to support your allegation that Opposer fraudulently obtained its registration for the Trademark?

48. What evidence do you have to support your allegation that Opposer or its predecessor provided a false and misleading description of the goods and/or services covered by its application for registration of the Trademark?

49. What evidence do you have to support your allegation that Roger Rojas mischaracterized his goods as "telecommunication services" in his application for registration of the Trademark?

50. What evidence do you have to support your allegation that the representations of Opposer or its predecessor to the U.S. Patent & Trademark Office concerning the date of first use and the manner and mode of use were intentionally false and misleading?

51. What evidence do you have to support your allegation that Roger Rojas knew or should have known that you had used the Trademark at least as early as March 10, 1998?

52. What evidence do you have to support your allegation that the representations made in Roger Rojas' statement of use as submitted to the U.S. Patent & Trademark Office on or about January 28, 1999, were made by Roger Rojas with the knowledge and belief that said statement was false?

53. What evidence do you have to support your allegation that the first use of the Trademark as alleged in the application of Roger Rojas with the U.S. Patent & Trademark Office was not rendered in interstate commerce as alleged but was rendered wholly within the State of California?

54. What evidence do you have to support your allegation that the registrant of

registration no. 2,243,269 for the Trademark abandoned the Trademark by failing to use it in connection with the products and services for at least two years with no intention to resume such use?

55. What evidence do you have to support your allegation that Roger Rojas knowingly required or consented to a third party, Gold Shells, Inc., to describe itself as an owner of the Trademark since at least 2003 without proper licensing or any assignment?

56. What evidence do you have to support your allegation that Opposer failed to disclose to the U.S. Patent & Trademark Office known uses of the Trademark, or allegedly confusingly similar mark by others, including Applicant?

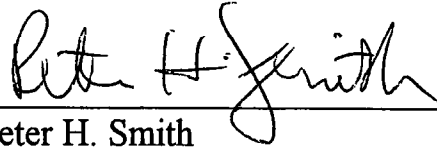
57. State whether you have or had a policy for the retention or the destruction of records, documents or files, and if so, identify the terms of such policies and the categories of documents covered; if there have been any changes in such policy and if so, the dates and nature of each such change; the types of files maintained and the location of such files; the name and address of the custodian or custodians of such files; and identify any documents relating thereto.

58. Identify any and all experts Applicant has or plans to employ to testify as an expert in this matter and set forth the subject matter of his or her testimony and the qualifications of said expert.

59. Identify each person Applicant expects to offer as a fact witness, and state the substance of the facts to which each such witness is expected to testify.

60. Identify all persons who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories.

Dated: June 29, 2005

A handwritten signature in black ink, appearing to read "Peter H. Smith", is written over a horizontal line.

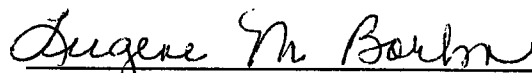
Peter H. Smith
Attorney for Opposer
Gold Shells, Inc., and
Counterclaim Respondent Roger Rojas

1535 J Street, Suite A
P.O. Box 1867
Modesto, CA 95353
Telephone: (209) 579-9524

PROOF OF SERVICE

The person whose signature appears below confirms that the **OPPOSER'S FIRST SET OF INTERROGATORIES** was served upon the Applicant herein as follows:

- ☐ By delivering a copy of the paper to the person served.
- ☐ By leaving a copy at the usual place of business of the person served, with someone in his employment.
- ☐ By leaving a copy at the residence of the person served, with a member of his family over the age of 14 years and of discretion, since the person served is not believed to have the usual place of business.
- ☒ By transmitting a copy of the document by overnight courier California Overnight prepaid, to the Attorney for the Applicant, Stephen L. Anderson, Esq., Anderson & Associates, 27349 Jefferson Avenue, Suite 211, Temecula, California 92590, which transmittal was made on June 29, 2005, at Modesto, California.



Lugene M. Borba

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Trademark Application Serial No.: 78/229,875 Mark: MESSAGE IN A BOTTLE GOLD SHELLS, INC., a California corporation, Opposer, v. KEITH CANGIARELLA, Applicant.	Opposition No. 91162780 APPLICANT'S GENERAL OBJECTIONS TO OPPOSER'S EXCESSIVE INTERROGATORIES—SET ONE
In the Matter of Trademark Registration No.: 2,243,269 Mark: MESSAGE IN A BOTTLE KEITH CANGIARELLA, Petitioner, v. Gold Shells, Inc, Assignee	

**APPLICANT'S GENERAL OBJECTIONS TO OPPOSER'S FIRST SET OF
INTERROGATORIES**

Applicant, Keith Cangiarella ("Applicant"), hereby objects to Opposer's First Set of Interrogatories pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice.

PREFATORY STATEMENT

The following objections are given without prejudice to Applicant's right to later provide a substantive response to the interrogatories and/or to produce evidence of any subsequently discovered fact or facts which may later be developed. These objections are required in lieu of a response to the excessive number of interrogatories and should in no way be considered prejudicial in relation to further discovery, research, analysis or production of evidence.

These general objections are submitted instead of serving answers and specific objections to the interrogatories and are required by Chapter 400 of the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and specifically by 37 C.F.R. § 2.120(d)(1).

Applicant does not waive, nor intend to waive any particular objection to any specific interrogatory, nor does the Applicant waive, in whole or in part the attorney-client privilege, work product protection, or any right of privacy or confidentiality provided for by law with respect to any matter whatsoever. In raising these general objections, responding party will not undertake to provide any information protected by the attorney-client privilege or work product doctrine.

Applicant party does not concede the admissibility, relevance or materiality of the discovery or the subject matter referred to therein. Except for facts specifically admitted herein, no admission of any nature, whatsoever, it to be implied or inferred, the fact that any interrogatory has been answered should not be taken as an admission, or concession of the existence of any fact set forth or assumed by the interrogatory, or that the answer constitutes evidence of any facts thus set forth or assumed.

Each response is subject to all objections as to competency, relevancy, materiality, propriety, and admissibility, and any and all other objections and grounds that would require the exclusion of any document herein at trial. All such objections and ground are reserved.

GENERAL OBJECTIONS

1. Applicant objects to the Interrogatories generally to the extent that they exceed the requirements and permissible scope of discovery under the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Applicant generally objects to the entire first set of interrogatories on the basis that the number of interrogatories served exceeds the limit specified in 37 C.F.R. § 2.120(d)(1). See: 37 CFR § 2.120(d)(1) and Helen R. Wendel, *TIPS FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE TTAB: The Burden Shifts: Revised Discovery Practice Under Trademark Rule 2.120(d)(1)*, 82 Trademark Rep. 89 (1992); *Brawn of California Inc. v. Bonnie Sportswear Ltd.*, 15 USPQ2d 1572, 1574 (TTAB 1990).

3. Applicant objects to the Interrogatories generally to the extent that any interrogatories herein seek to require Applicant to identify documents or search for information about documents no longer in existence or not currently in Applicants' possession, custody or control, or to identify or describe persons, entities, or events not known on the grounds that such instructions, definitions or interrogatories are overbroad and seek to require more of Applicant than any obligation imposed by the Federal Rules of Civil Procedure or the Trademark Rules of Practice, subject Applicant to unreasonable and undue annoyance, oppression, burden and expense, and seek to impose upon Applicant an obligation to investigate or discover information or materials from third parties or sources which are equally accessible to Opposer. Applicant further objects to this entire set inasmuch as the discovery sought is unreasonably cumulative or duplicative, and that such information is already in the possession of the requesting party or is otherwise obtainable from some other source that is more convenient, less burdensome, or less expensive.

4. Applicant objects to the Interrogatories generally to the extent that they are overly broad in seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

5. Applicant objects to each interrogatory generally to the extent that such interrogatory is so broad, vague, uncertain, and/or ambiguous that Applicant cannot determine the precise nature of the information and/or documents sought and, therefore, is made to respond with an unreasonable risk of inadvertently providing a misleading, confusing, inaccurate and/or incomplete response. Additionally, responses to such interrogatories will subject Applicant to an unreasonable, oppressive and undue burden, especially, to the extent that the overbreadth, vagueness and ambiguity will require Applicant to provide responses on issues that are irrelevant to these cases. The burden of responding to such interrogatories outweighs the likelihood that the information and/or documents sought may lead to the discovery of admissible evidence.

6. Applicant objects to each interrogatory generally to the extent it calls for speculation and conjecture, opinion, or a legal conclusion.

7. Applicant objects to each interrogatory generally to the extent that it seeks confidential, proprietary or trade secret information and/or documents. Applicant further objects to Opposer's interrogatories to the extent that they seek confidential information in the absence of an appropriate protective order or other information subject to the attorney-client privilege or constituting attorney work product. The interrogatories are overbroad as to time frame, and overbroad in scope and concern matters violative of the Applicant's Constitutional, and statutory privacy rights. Where it is obvious that such information and/or documents is sought, Applicant has so indicated in its response. Beyond the information and documents provided herewith, Applicant will not produce any further information about its business, and will not produce any further confidential, proprietary and/or trade secret information and/or documents absent a showing of relevance, and need by Opposer and the entry of an appropriate protective order.

8. Applicant objects to the Interrogatories generally to the extent that they require Applicant to warrant that the information provided is exhaustive regardless of whether the requested information is within Applicant's control. Applicant will endeavor to provide discovery in good faith and consistent with the Federal Rules of Civil Procedure and Trademark Rules of Practice.

9. Applicant generally objects to the "Definitions" and "Instructions" contained in Opposer's interrogatories to the extent that they seek to impose obligations on Applicant beyond those set forth in the Federal Rules of Civil Procedure and the Trademark Rules of Practice, and that they further compound and convolute the already excessive number of interrogatories propounded by Opposer, and matters requested therein.

ANDERSON & ASSOCIATES

Dated: August 12, 2005

By: 

Stephen L. Anderson, Esq.
27349 Jefferson Avenue, Ste. 211
Temecula, CA 92590
(951) 719-1371

Attorneys for Applicant/Petitioner
KEITH CANGIARELLA

Certificate of Service

I hereby certify that a copy of the foregoing APPLICANT'S GENRAL OBJECTIONS TO OPPOSER'S FIRST SET OF INTERROGATORIES was mailed first-class mail, postage prepaid, to Peter H. Smith, Attorney at law, 1535 J Street, Suite A, Post Office Box 1867, Modesto, California, 95353, attorney for Opposer,

August 12, 2005


EYAD KARKOUTLY

PETER H. SMITH

ATTORNEY AT LAW

1535 J STREET, SUITE A

POST OFFICE BOX 1867

MODESTO, CALIFORNIA 95353

TELEPHONE (209) 579-9524

FACSIMILE (209) 579-9940

MEMBER OF CALIFORNIA
& OREGON STATE BARS

September 17, 2005

Stephen Lee Anderson, Esq.
Anderson & Associates
32605 Highway 79 South, Suite 208
Temecula, CA 92592

Re: Gold Shells, Inc. v. Cangiarella
Trademark Trial & Appeal Board Opposition No. 91162780

Dear Mr. Anderson:

This will address your general objections dated August 12, 2005, to the first set of interrogatories of Gold Shells, Inc., in the above-referenced matter. This letter is an attempt to "meet and confer" in regard to a discovery dispute with the goal of avoiding a motion to compel answers with the Trademark Trial & Appeal Board.

You have failed to answer any of the interrogatories on the ground "... that they exceed the requirements and permissible scope of discovery under the Federal Rules of Civil Procedure or the Trademark Rules of Practice." You say, "... the number of interrogatories served exceeds the limit specified in 37 CFR §2.120(d)(1)."

This is not true. You were served with 60 interrogatories. Three of those interrogatories have subparts: number 11 has 3, number 13 has 6, and number 16 has 2. Counting these subparts, the total number of interrogatories is 68. This is well below the limit of 75 interrogatories (counting subparts) specified in Trademark Rule Section 2.120(d)(1).

In any event, the rational procedure in a case of excessive interrogatories is to answer the first 75 and object to answering any beyond that, not to simply stonewall the entire set of interrogatories. Your blanket objection to these interrogatories – which are a typical set in an opposition proceeding involving issues of likelihood of confusion and priority – cannot in any light be viewed as a good faith participation in the discovery process.

I also submit that your other objections are not well taken. Of course the interrogatories do not require the applicant to identify documents no longer in existence or not currently in his possession, custody, or control, or to identify things not known, so this is not a valid ground for objection.

EXHIBIT C

Stephen Lee Anderson, Esq.
September 17, 2005
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I concede that nothing is required by these interrogatories beyond the obligations imposed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice, so it is not a valid ground of objection to say that these interrogatories seek more than that.

It is not a valid ground of objection to say that the interrogatories subject the applicant to unreasonable and undue annoyance, oppression, burden, and expense, or that they seek to impose upon him an obligation to investigate or discover information or materials from third parties or sources which are equally accessible to the opposer. Again, the opposer's discovery simply seeks information in the applicant's possession, custody, or control, and makes no pretense to require discovery from third parties.

Furthermore, it is not a valid ground of objection that the discovery sought is unreasonably cumulative or duplicative, or in the possession of the opposer, or otherwise obtainable from some other source. ". . . It is generally not a valid objection to discovery that information sought is within the knowledge of the discovering party, and no distinction should be drawn between facts within or not within the knowledge of that party." 10 Federal Procedure Lawyer's Edition, Section 26:66, page 383.

Furthermore, your simply reciting an objection to the extent that the interrogatories are "overly broad and seeking information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence" does not make it so. "The scope of discovery in the federal courts is broad and requires nearly total mutual disclosure of each parties' evidence prior to trial. . . . The discovery rules are to be accorded broad and liberal treatment, particularly where proof of interest in required. The information sought need not be admissible at the trial if the information appears reasonably calculated to lead to the discovery of admissible evidence. The purpose of discovery is to allow a broad search for the facts, the names of witnesses, or any other matters which may aid a party in the preparation or presentation of its case. It is intended that each party obtain in advance of trial knowledge of all relevant facts in the position of the other party. . . . FRCP 26(b) envisions generally unrestricted access to sources of information, even where compliance with discovery creates considerable burdens for the parties." (Supra, §26:64, page 380).

You have also objected to the interrogatories "to the extent" that they are too broad, vague, uncertain, or ambiguous, but none of these interrogatories fit that description. "The placement of the burden of proof is not a limitation upon the boundaries of discoverable material, and a party who has the burden of establishing the issue is to which the discovery relates is nonetheless entitled to discovery." (Supra, §26:64, page 381).

Stephen Lee Anderson, Esq.

September 17, 2005

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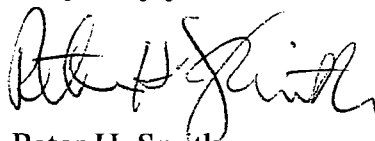
You also object "to the extent" that the interrogatories call for speculation, conjecture, opinion, or legal conclusion, but they do not do so.

In regard to your objections that particular interrogatories seek confidential, proprietary, or trade secret information and/or documents, I have expressed the same objection to some of your document requests. You had mentioned to me that you had planned to send me a proposed protective order or agreement which would allow us to exchange relevant information which would be commercially sensitive to our clients, and I encourage you to do so. It is not appropriate to simply say that you will not produce any information about your client's business. Some business information should not be deemed confidential, and any confidential information should be discoverable with an appropriate protective order or confidentiality agreement.

In your objections, you say that you will "endeavor to provide discovery in good faith and consistent with the Federal Rules of Civil Procedure and Trademark Rules of Practice". I simply ask that you do so. "Unless the scope of discovery is otherwise limited by order of a court in accordance with the Federal Rules of Civil Procedure, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . ." (Supra, § 26:64, page 380). "FRCP 26(b)(1) sets forth the general rule that parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. . . . The requirement of relevancy must be construed liberally with common sense rather than measured by precise issues refined by the pleadings or limited by other concepts of narrow legalisms; thus, discovery should ordinarily be allowed unless it is clear that the information sought can have no possible bearing upon the subject matter of the action. Generally, if information sought is relevant to the subject matter of the litigation, it is discoverable unless privileged." (Supra, §26:67, page 384).

Please answer the interrogatories without further delay. I will reserve any comments on your objections to my admission requests and document requests pending receipt of your documents, noting that the deadline for a motion to compel is not yet near.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter H. Smith", written in a cursive style.

Peter H. Smith

PHS/lmb

cc: Gold Shells, Inc.

Stephen Lee Anderson, Esq.

September 17, 2005

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P.S. I acknowledge receipt of your interrogatories on September 16, 2005, but am unable to compile responses with my client until after my return from vacation; so I am on September 19 serving you only with responses to your admission requests and document requests.



ANDERSON & ASSOCIATES

32605 Highway 79 South, Suite 208 • Temecula, CA 92592
(951) 694-1877 • (951) 694-1876 fax
attorneys@brandXperts.com

Peter H. Smith, Esq.
1535 J Street, Suite A
P.O. Box 1867
Modesto, CA 95353

September 29, 2005

Re: Gold Shells, Inc. v. Cangiarella
Trademark Trial & Appeal Board Opposition No. 91162780

Dear Mr. Smith:

This letter responds to yours dated September 17, 2005 which concerns Applicant's objections to Opposer's First Set of Interrogatories.

You have specifically asserted that the total number of interrogatories in your client's first set is 68 and that that my client's blanket objection to the entire set on the ground that they exceed the limit specified in 37 C.F.R. §2.120(d)(1), "cannot in any light be viewed as a good faith participation in the discovery process."

You have further contended that the "rational procedure in the case of excessive interrogatories is to answer the first 75 and object to answering any beyond that, not to simply stonewall the entire set of interrogatories."

Finally, you have contended that my client's "blanket objection to these interrogatories – which are a typical set in an opposition proceeding involving issues of likelihood of confusion and priority – cannot in any light be viewed as a good faith participation in the discovery process."

To the contrary of your baseless assertions, I am simply compelled to stand by said objections as related to your excessive interrogatories for the following reasons:

As you are no doubt aware, 37 CFR § 2.120(d)(1) states that "(t)he total number of written interrogatories which a party may serve upon another party pursuant to Rule 33 of the Federal Rules of Civil Procedure, in a proceeding, shall not exceed seventy-five, counting subparts, except that the Trademark Trial and Appeal Board, in its discretion, may allow additional interrogatories upon motion therefore showing good cause, or upon stipulation of the parties."

Your assertion that the "rational procedure in a case of excessive interrogatories is to answer the first 75 and object to answering any beyond that" is simply incorrect and unfounded. To the contrary, as called for by Section 405.03 of the TTAB Manual of Procedure, Second Edition published 11 June 2003, at page 400-42:

"If a party on which interrogatories have been served, in a proceeding before the Board, believes that the number of interrogatories served exceeds the limit specified in 37 CFR § 2.120(d)(1), and wishes to object to the interrogatories on this basis, the party must, within the time for (and instead of) serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number."¹

Further, according to such section, "[a] party should not answer what it considers to be the first seventy-five interrogatories and object to the rest as excessive."²

Therefore, contrary to your assertions, I have indeed followed the applicable rules of discovery in good faith herein. Please note for your information that we have utilized the Board's prescribed method of determining whether the number of interrogatories are excessive and as shown by the attached worksheet, we have determined that in fact the actual number of interrogatories propounded by your client is not 68, but is actually at least 154, more than twice the permissible limit.

Again as you should be aware and as stated in the TTAB Manual of Procedure, Second Edition, published 11 June 2003 at section 405.03(d) at page 400-40:

"In determining whether the number of interrogatories served by one party on another exceeds the limit of 37 CFR § 2.120(d)(1), the Board will count each subpart within an interrogatory as a separate interrogatory, regardless of whether the subpart is separately designated (i.e., separately numbered or lettered)"⁴. If an interrogatory includes questions set forth as numbered or lettered subparts, each separately designated subpart will be counted by the Board as a separate interrogatory. The propounding party will, to that extent, be bound by its own numbering system, and will not be heard to complain that an interrogatory, although propounded with separately designated subparts, should nevertheless be counted as a single interrogatory because the interrogatory concerns a single transaction, state of facts, etc., or because the division was made for clarification or convenience.³

¹ See 37 CFR § 2.120(d)(1) and Helen R. Wendel, TIPS FROM THE UNITED STATES PATENT AND TRADEMARK OFFICE TTAB: The Burden Shifts: Revised Discovery Practice Under Trademark Rule 2.120(d)(1), 82 Trademark Rep. 89 (1992).

² *Brawn of California Inc. v. Bonnie Sportswear Ltd.*, 15 USPQ2d 1572, 1574 (TTAB 1990).

³ See *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Pyttronic Industries, Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America, Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990); *Brawn of California Inc. v. Bonnie Sportswear Ltd.*, 15 USPQ2d 1572, 1574 (TTAB 1990); and Carla Calcagno, TIPS FROM THE TTAB: Discovery Practice Under Trademark Rule 2.120(d)(1).

Moreover, as specifically stated at page 400-41 of the TTAB Manual, "[i]f an interrogatory requests information concerning more than one issue, such as information concerning both 'sales and advertising figures,' or both 'adoption and use,' the Board will count each issue on which information is sought as a separate interrogatory.

As shown by the attached worksheet, we have in good faith adopted such an approach, which has led us to believe that your interrogatories are grossly excessive, unreasonable and were propounded in bad faith.

For example, your client's Interrogatory No. 1 requests that the Applicant "Identify each product and service produced or marketed by you to date under the trademark.

Inasmuch as the Applicant may have produced both products and services under the mark, and may also have marketed certain products and services that he did not "produce" such interrogatory actually counts as 3 distinct subparts. Being conservative however, we only counted 2 while arriving at our calculation of 154 interrogatories as shown by the attached worksheet.

Further, your client's Interrogatory No. 2 similarly requests that the Applicant "Identify each product and service produced or marketed by you to date under the trademarks other than the Trademark." As such, said interrogatory similarly contains at least 2 (more appropriately 3) distinct issues.

Your client's third interrogatory requests that the Applicant "[i]dentify any and all trademarks used to date, or intended to be used, by Applicant on any of its products or services. Again such interrogatory involves at least four separate inquiries, namely:

- (1) That the Applicant identify any and all trademarks used to date . . . on any products;
- (2) That the Applicant identify any and all trademarks used to date . . . on any services;
- (3) That the Applicant identify any and all trademarks intended to be used on any of his products;
- (4) That the Applicant identify any and all trademarks intended to be used on any of his services.

Again, in good faith and being conservative rather than aggressive, we counted such third interrogatory only twice as shown on the attached worksheet.

As a final example, your client's seventh interrogatory requests that the Applicant "Identify what change is intended as to each product and service produced or marketed by you to date for which you intend to change the trademark."

As shown by the worksheet, such interrogatory involves four distinct issues, namely:

- Based on the foregoing, and in light of the fact that you curiously reserved an identical set of Opposer's First Set of Interrogatories to Applicant along with your September 17, 2005 correspondence, we again serve herewith our client's objections to same. Further redundant sets of discovery which we have already responded to, which you may again serve in bad faith may not receive such courtesy. Again, based on the foregoing and attached worksheet we hereby stand by our prior objections as stated.

Sincerely yours,

Enclosures: - Applicant's General Objections to Opposer's Excessive Interrogatories – Set One (second service);
- Interrogatory Counting Worksheet showing at least 154

ANDERSON & ASSOCIATES

forth as part of the response the language deemed to be ambiguous and the interpretation chosen for use in the interrogatory.

III.
INTERROGATORIES

① 1. Identify each product and service produced or marketed by you to date under the Trademark. ② * ③

③ 2. Identify each product and service produced or marketed by you to date under trademarks other than the Trademark. ④ ⑤ ⑥

⑤ 3. Identify any and all trademarks used to date, or intended to be used, by Applicant on any of its products or services. ⑥

⑦ 4. Identify which trademark is used on each product and service produced or marketed by you to date. ⑧ * ⑨

⑩ 5. Identify which trademark is intended to be used by you on each product and service intended to be produced or marketed by you in the future. * ⑪ ⑫

⑬ 6. Identify each product and service produced or marketed by you to date for which you intend to change the trademark. ⑭ ⑮

⑯ 7. Identify what change is intended as to each product and service produced or marketed by you to date for which you intend to change the Trademark. ⑰ ⑱

⑲ 8. Identify all discontinued goods and services that Applicant previously identified with the Trademark. ⑳

9. As to all discontinued goods and services that Applicant previously identified with the Trademark, identify when the use began and ended for each such category of goods and services.

10. As to all discontinued goods and services that Applicant previously identified with the Trademark, state why the goods or services were discontinued.

11. With respect to each of the products and services identified in Applicant's response to interrogatory number 1, indicate Applicant's total sales of such products and services for each year from 1998 to the present date by giving for each:

(a) the dollar value of such sales;

(b) the unit volume of such sales; and

(c) identify all documents related thereto

12. If Applicant distributes goods and services identified with the Trademark through a third party or parties, including licensees and distributors, identify each third-party licensee or distributor and the geographical area in which such party or parties operate.

13. For each product and service which you have sold or intend to sell under the Trademark, identify:

(a) the geographic area in which the products and services have been sold;

(b) the channels of trade for the sale of the products and services;

(c) each retail or other sales establishment;

(d) the actual or intended class of consumers;

(e) the channels or media in which you have promoted or advertised the product or service or intend to promote or advertise the product or service; and

(f) all documents related thereto.

14. Identify, by mark and registration number or serial number, each trademark application filed by you in, or trademark registration issued to you by, the United States Patent and Trademark Office.

15. State whether you have ever received an opinion by correspondence or communication concerning possible trademark conflict arising out of the use or intended use of the Trademark by Opposer, and, if so, for each such correspondence or communication identify the date upon which each such correspondence or communication was transmitted, the person transmitting each such correspondence or communication, and the person receiving each such correspondence or communication.

16. Identify (a) any and all instances where you have received a telephone call, invoice, letter or other communication intended for Opposer, which referred or related to the products or services of Opposer, or which was an inquiry concerning a possible relationship or affiliation between you and Opposer, and (b) any documents related thereto.

17. Identify all documents in your possession, custody, or control that relate to or mention the Trademark as used by Opposer.

18. Identify when and the circumstances under which you first learned or became aware of Roger Rojas and his use of the Trademark.

19. Identify when and the circumstances under which you first learned or became aware of Gold Shells, Inc., and its use of the Trademark.

20. Identify each advertising agency or public relations firm which you have retained in connection with your sale or intended sale of products or services bearing the Trademark, starting with 1998 and continuing to the present time, and identify the date retained, the services provided by the firm, and the amounts you paid for such services.

21. List all media in which Applicant has promoted or advertised its goods or services associated with the Trademark from 1998 to the present.

22. State the dollar amount spent annually on advertising and promoting goods and services under the Trademark annually during each of the last five years, including the portion of the present year to date, for each category of goods and services sold by Applicant under the Trademark.

23. Identify all persons other than Opposer and Roger Rojas with whom you have or have had a dispute regarding use of the Trademark or a mark allegedly similar thereto.

24. Did you view the Internet website www.messageinabottle.com prior to March 25, 2003?

25. Did you apply for the Internet website address www.messageinabottle.com?

26. If your answer to interrogatory no. 25 is "yes", when did you apply?

27. If your answer to interrogatory no. 25 is "yes", what was the result of your application?

28. What is the basis for your denying that Opposer is the owner of service mark registration no. 2,243,269 for the mark MESSAGE IN A BOTTLE in Class 38 for receiving communications from others, recording such communications in written or printed form, and transmitting such communication to others? (79)

29. What is the basis for your denying that registration no. 2,243,269 is valid and subsisting and is conclusive evidence of Opposer's exclusive rights to use the Trademark in commerce on the services specified in Opposer's registration? (80)

30. What is the basis for your denying that the Trademark as used by Applicant so resembles the Trademark as registered by Opposer as to be likely to cause confusion, or to cause mistake, or to deceive? (81) (82) (83)

(84) 31. What is the basis for your denying that since January 16, 1999, Opposer or its predecessor have been, and Opposer is now, actually using the Trademark in connection with the sale of services as described in Opposer's registration and as a trademark in connection with the sale of goods consisting of novelty, favor, and souvenir bottles containing messages and greetings, identical to some of the goods set forth in Applicant's application? (85) (86) (87) (88)

32. What is the basis for your denying that under Section 7(c) of the Lanham Act, Opposer has a priority right to the Trademark through constructive use based on the filing date of its predecessor's original intent-to-use service mark application? (89)

33. What is the basis for your denying that use of the Trademark by Opposer and (90)

(91) its predecessor has been valid and continuous since the date of first use and has not been abandoned? (92)

(93) 34. What is the basis for your denying that the services for which Opposer's mark was registered and the goods for which Applicant's application has been published for opposition are related? (94)

35. What is the basis for your denying that you use the Trademark on services which are identical to those for which Opposer has registered the Trademark?

36. What is the basis for your denying that the nature of the goods and services of Applicant and Opposer are substantially similar? (95) (96)

37. What is the basis for your denying that the Trademark is symbolic of Opposer's extensive good will and customer recognition built up by Opposer and its predecessor through a substantial amount of time and effort in advertising and promotion? (97) (98)

38. What is the basis for your denying that the mark as used by Applicant so resembles the Trademark as used by Opposer as to be likely to cause confusion, or to cause mistake or to deceive? (99)

39. What evidence do you have to support your affirmative defense that Opposer lacks any standing to bring this opposition? (100)

40. What evidence do you have to support your affirmative defense that Opposer is barred by laches, acquiescence, and estoppel from bringing this opposition? (101) (102) (103)

41. What evidence do you have to support your affirmative defense that Opposer's

(104) (105)
claims are barred due to its own fraud and fraudulent conduct and that of its alleged predecessor?

42. What evidence do you have to support your affirmative defense that Opposer's claims are barred as unconscionable and due to the unclean hands of Opposer and its alleged predecessor, Roger Rojas? (106) (107) (108) (109) (110)

43. What evidence do you have that Opposer and its alleged predecessor, Roger Rojas, have not used the Trademark on goods or services as an identification of origin of those goods or services identified in the Notice of Allowance for Opposer's registration no. 2,243,269? (111) (112) (113) (114)

44. What evidence do you have to support your affirmative defense that Opposer and its alleged predecessor have not used the Trademark on any services that may be properly characterized as within International Class 38? (115) (116) (117) (118)

45. What evidence do you have to support your affirmative defense that any use of the Trademark other than for the specific services identified in the Notice of Allowance for Opposer's registration no. 2,243,269 would not lead to a likelihood of confusion?

46. What evidence do you have to support your affirmative defense that Opposer's Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition? (119) (120)

47. What evidence do you have to support your allegation that Opposer fraudulently obtained its registration for the Trademark? (121)

48. What evidence do you have to support your allegation that Opposer or its predecessor provided a false and misleading description of the goods and/or services covered by its application for registration of the Trademark? (122) (123) (124) (125)

49. What evidence do you have to support your allegation that Roger Rojas mischaracterized his goods as "telecommunication services" in his application for registration of the Trademark? (126)

50. What evidence do you have to support your allegation that the representations of Opposer or its predecessor to the U.S. Patent & Trademark Office concerning the date of first use and the manner and mode of use were intentionally false and misleading? (127) (128) (129)

51. What evidence do you have to support your allegation that Roger Rojas knew or should have known that you had used the Trademark at least as early as March 10, 1998? (130) (131)

52. What evidence do you have to support your allegation that the representations made in Roger Rojas' statement of use as submitted to the U.S. Patent & Trademark Office on or about January 28, 1999, were made by Roger Rojas with the knowledge and belief that said statement was false? (132)

53. What evidence do you have to support your allegation that the first use of the Trademark as alleged in the application of Roger Rojas with the U.S. Patent & Trademark Office was not rendered in interstate commerce as alleged but was rendered wholly within the State of California? (133) (134)

54. What evidence do you have to support your allegation that the registrant of

registration no. 2,243,269 for the Trademark abandoned the Trademark by failing to use it in connection with the products and services for at least two years with no intention to resume such use? (135)

55. What evidence do you have to support your allegation that Roger Rojas knowingly required or consented to a third party, Gold Shells, Inc., to describe itself as an owner of the Trademark since at least 2003 without proper licensing or any assignment? (136)

56. What evidence do you have to support your allegation that Opposer failed to disclose to the U.S. Patent & Trademark Office known uses of the Trademark, or allegedly confusingly similar mark by others, including Applicant? (137)

57. State whether you have or had a policy for the retention or the destruction of records, documents or files, and if so, identify the terms of such policies and the categories of documents covered; if there have been any changes in such policy and if so, the dates and nature of each such change; the types of files maintained and the location of such files; the name and address of the custodian or custodians of such files; and identify any documents relating thereto. (138) (139) (140) (141) (142) (143) (144) (145) (146) (147)

58. Identify any and all experts Applicant has or plans to employ to testify as an expert in this matter and set forth the subject matter of his or her testimony and the qualifications of said expert. (148) (149) (150)

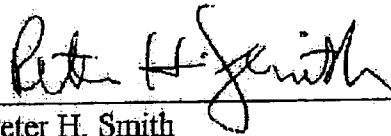
59. Identify each person Applicant expects to offer as a fact witness, and state the substance of the facts to which each such witness is expected to testify. (151) (152)

(153)

154

60. Identify all persons who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories.

Dated: June 29, 2005




Peter H. Smith
Attorney for Opposer
Gold Shells, Inc., and
Counterclaim Respondent Roger Rojas

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PROOF OF SERVICE

The person whose signature appears below confirms that the **OPPOSER'S FIRST SET OF INTERROGATORIES** was served upon the Applicant herein as follows:

- _____ By delivering a copy of the paper to the person served.
- _____ By leaving a copy at the usual place of business of the person served, with someone in his employment.
- _____ By leaving a copy at the residence of the person served, with a member of his family over the age of 14 years and of discretion, since the person served is not believed to have the usual place of business.
- X By transmitting a copy of the document by overnight courier California Overnight prepaid, to the Attorney for the Applicant, Stephen L. Anderson, Esq., Anderson & Associates, 27349 Jefferson Avenue, Suite 211, Temecula, California 92590, which transmittal was made on June 29, 2005, at Modesto, California.


Lugene M. Borba